

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 11/02/99

ORAL JUDGEMENT

1. The petitioner, through this petition under Article 226 of the Constitution of India, has challenged the detention order dated 7th July 1998 passed by the Commissioner of Police, Ahmedabad, under Section 3(2) of the Prevention of Anti-social Activities Act (for short 'PASA'), and has prayed for immediate release from illegal detention with further prayer that the impugned detention order may be quashed.

2. The grounds of detention indicate that on account of registration of four cases under the Bombay Prohibition Act and statements of two confidential witnesses the petitioner was considered to be a bootlegger and his activities were found to be prejudicial for maintenance of public order. Hence the impugned order was passed against him.

3. This order has been challenged on two grounds. The first is that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order and the second is that the representation dated 1.8.1998 sent by the Advocate of the detenu was not decided by the State Government.

4. Coming to the second ground it is clear from Para : 5 of the Counter Affidavit of Shri J.R.Rajput, Under Secretary to the State of Gujarat that representation dated 1.8.1998 was made by the Advocate of the detenu and it was addressed to the Chief Minister, but since it was not bearing the signature of the detenu nor any vakalatnama was filed by the Advocate hence it was returned with a request to send the same with thumb impression or signature of the detenu. It is further clear from this para that till date the representation has not been decided by the State Government. The State Government was hardly justified in demanding vakalatnama from the Advocate who sent the representation to the State Government. Once it was mentioned that the representation was sent under the instructions of the detenu no further obligation was cast upon the advocate to enclose or annex vakalatnama from the detenu. The representation under the instruction of the detenu sent by his Advocate requires no signature or thumb impression of the detenu. The insistence of the State Government for additional compliance was therefore uncalled for and

representation has been kept pending on technical ground which is violative of the mandate of the Apex Court in Balchand Chorasias v/s. Union of India, reported in AIR 1978 SC 297. Thus on this ground the detention order and continued detention of the petitioner is rendered invalid and illegal.

5. The second ground is also not without substance.

The petitioner on account of registration of four cases under the Bombay Prohibition Act can be said to be bootlegger. For this some assistance has been given by the two confidential witnesses also that the petitioner is engaged in bootlegging activities, but a bootlegger cannot be detained preventively unless his activities are prejudicial for maintenance of public order within the meaning of Section 3(4) and explanation appended thereto of the PASA. Four registered offences under the Bombay Prohibition Act did not create any situation prejudicial for maintenance of public order. The statements of two confidential witnesses are parrot like statements and even on the face value of such statements it can hardly be said that the alleged activities of the petitioner were prejudicial for maintenance of public order and even tempo of the life of the locality or community was disturbed. The face value of the statements of the two witnesses only created situation of maintenance of law and order and not situations prejudicial for maintenance of public order.

6. Thus, on the above two grounds the impugned order can not be sustained. The result, therefore, is that the petition succeeds and is hereby allowed. The impugned order of detention dated 7.7.1998 passed against the detenu is hereby quashed. The petitioner shall be released forthwith unless he is wanted in some other case.

sd/-

Date : February 11, 1999 (D. C. Srivastava, J.)

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